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Supreme Court, U.S.

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JOSEPH F. SPANIOLO, JR.
CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

ROBERT C. GREENE, Pro se.
PETITIONER

VS.

TOWN BOARD, TOWN OF WARRENSBURG, et al,
and

NEW YORK STATE ATTORNEY GENERAL
RESPONDENTS

PETITION FOR WRIT OF CERTIORARI
TO THE NEW YORK STATE COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

ROBERT C. GREENE, Pro se

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Questions Presented

Are the laws of New York State Town Law 81 (e) being interpreted in a way that violates the United States Constitution and the New York State Constitution by limiting petitions from the people to the government to those subjects that are specifically specified in New York State statutes?

Are the laws of New York State Town Law 81 (4) in violation of the United States Constitution and the New York State Constitution by limiting signers to a petition concerning money matters of the town to residents whom are registered voters and also registered property owners of the town, thereby abridging the rights of registered voters of the town whom are apartment dwellers; also the prohibiting a referendum if financed by surplus funds?
(Emphasis supplied)



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STATUTES

New York State Town Law

§81	3 4 5 6 12 13
§84	12

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RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE
NEW YORK STATE COURT OF APPEALS

Petitioner, ROBERT C. GREENE,
respectfully preys that a writ of
certiorari issue to review the judgment
and opinion of the New York State Court of
Appeals in regards to the constitutionality
of a New York State statute that limits the
rights of the people to petition the
government and the New York State Court
rulings that have limited to subjects of a
petition to only those expressly permitted
by New York State statutes.

OPINIONS BELOW

The New York State Court of Appeals opinion is presented in appendix pg. 17

The New York State Appellate Division opinion is presented in appendix pg. 18-21

JURISDICTION

The New York State Court of Appeals opinion in this matter was filed on June 7, 1990. No new information had come to light at that time to be able to petition for a rehearing.

This Court's jurisdiction is invoked under Title 28, U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED

Amendment 1 and 14 to the United States Constitution is in appendix pgs. 22

New York State Constitution Article 1 paragraph 9 is in appendix pg. 23

New York State Town Law §81 and §84 are in appendix pgs. 24-31

STATEMENT OF THE CASE

The New York supreme Court, County of Warren had jurisdiction in this case as the Township of Warrensburg is within the County of Warren. This case was appealed to the Appellate Division, the Court of Appeals then this appeal.

The origin of this case is the poor bending of radio waves used for television causing degraded or no pictures from the local television stations over fifty miles away to the homes in this mountainous area. The local government can install television translators as a service to the public, see appendix pgs.32-34 Petitioner has installed television translators in five nearby townships, financed by the local government.

This case started by the presentation of a petition to the Town Clerk on Sept.8, 1988, adhering to the New York State Town Law § 81, with 53 signatures and a question for voter decision. See Pg 34

Four previous petitions (not part of this case) had been presented to the Town, the last of these was carried into the courts in 1882 but the Court of Appeals did not grant leave to appeal and petitioner, a licensed Professional Engineer, did not then know the procedure to continue the appeal, as now.

In that earlier case, public parks and playgrounds, a subject allowed in New York State Town Law § 81 (d) see appendix pg 24 was compared to the recent terminology of "recreation facility". Watching television in leasure time is "recreating" and the installation of television translators will improve or "facilitate the recreating. This was not accepted. The Constitutional aspects were mentioned but their importance was not realized until later, even while preparing this case.

Regarding this case, the opening statement of New York Town Law § 81, a valid petition containing a question is required to be presented to the voters.

Sub-paragraph 1 (e) "To vote upon or determine any question, proposition or resolution which may lawfully be submitted, pursuant to this chapter or any general or special law." Emphasis supplied, see appendix pg. 24

The Town Board, Town of Warrensburg did not present the question to the voters for a decision, as the law requires, nor did the Town Board do any thing else to "redress the grievance".

This case is based upon these two aspects of no action. The Federal questions were first raised in the originating petition of complaint and petitioner's reply brief, as was any other points of law, res judicata, being applied would violate the United States Constitution and the New York State Constitution. These Federal and State Constitution violations were presented to the Appellate Division and to the Court of Appeals. Only recently did petitioner find the application of the 14th amendment to the 1st amendment upon the states.

REASONS FOR GRANTING THE WRIT

There are three points to make.

ONE This case presents decisions by New York State Courts that have been pyramided "to abridge the right to petition the government for a redress of grievances", a fundamental right under the 1st and 14th amendment to the United States Constitution, into the current ruling that unless the subject specifically appears in the New York State statutes, it is not a valid subject for a petition.

Judge Yasawich wrote "in the absence of an express statutory basis, the Board could not place an identical proposition before the electorate" ... also "Furthermore, Town Law § 81 provides a vehicle for citizens to have specified issues submitted for referendum. As such, it enlarges rather than diminishes the opportunity to petition for a redress." (see appendix pg 18 The New York State Constitution and the United States Constitution both

clearly prohibit any laws that "abridge the right of the people to petition the government for a redress of grievances".

The decisions by the New York State Courts have departed from the fundamental rights granted to the people by the United States Constitution such that an exercise of supervisory power by this Court is needed to resolve the differences.

To quote from *Mc Donald v Smith* 86 L.Ed. 2d 766 §5. Application of rights to states The following decisions of the United States Supreme Court have expressly recognized the First Amendment rights to assemble peaceably and to petition the government for a redress of grievances as being among those fundamental rights that have been made applicable against the states under the due process clause of the Fourteenth Amendment: *De Jonge v Oregon* (1937) 299 US 353, 81 L Ed 278, 57 S Ct 255; *Herndon v Lowry* (1937) 301 US 242, 81 L Ed 1066, 57 S Ct 732; *Edwards v South*

Carolina(1963) 372 US 229, 9 L Ed 2d 697,
83 S Ct 680; and Whitehill v Elkins(1967)
389 US 54, 19L Ed 2d 228, 88 S Ct 184.

Voting upon a subject has been ruled as an acceptable method of redressing a grievance, perhaps the foremost method. Other acceptable redresses could vary dependent upon the subject. However merely discussing a subject at a meeting would fall short of "redress of grievances", since the law that the petition was presented under called for a question to be submitted for voter approval.

To give an example of how quotes are sliced to fit their case, in the first reply brief to the 1982 case it was written: In the Matter of McCabe v. Voorhis, (243 N.Y. 401, 413) the Court of Appeals held that a legislative referendum is not required unless specifically authorized by statute. In that case Judge Pound writing for a unanimous court, said at page 413: "The Power to provide for a referendum must

be found in the City Home Rule Act.

(Mills v. Sweeney) 219 N.Y.213) Otherwise it is unauthorized." BUT when that same page, 413, is examined there is the statement "Direct legislation in cities must always rest on some constitutional or statutory grant of power. Government by representation is still the rule. Direct action by the people is the exception." This last quote also occurs in Elhind v. City of New Rochelle (5 Misc. 2d 300). The New York State Courts are now leaving out all references to constitutional authority.

In fact the same kind of prohibition of "in the absence of express statutory authority, an advisory referendum by a city is not authorized." Mills v. Sweeney, 219 N.Y. 213, 221, has been ruled against any plebiscite or straw vote. This has been considered to be a very useful vehicle of information.

No opinion or straw votes have been on New York election ballots for over twenty

years that petitioner can remember.

To make the point crystal clear as the New York State Appellate Court decision is incorrect--petitioner's opinion is that the laws of New York State are not in dispute but it is the New York State Court rulings that limit the subjects that can be permitted on petitions.

Petitioner does not have the sources available, as to attorneys, but with checking the law libraries no Federal cases have been found involving petitions to vote on a subject, except for one where the vote was to violate the United States Constitution's procedure for amendments. This occurred in Illinois where that State has an established procedure for Initiative and Referendum on a State wide vote and the attempt was to have the people pass the Equal Rights amendment to the United States Constitution, the court ruled that a straw vote was acceptable.

Some states limit the number of referendums per election. Illinois is one that places the limit at three if memory is correct.

There have been a few Federal cases involving plebiscite or straw vote, but to compare them to this case is like trying to compare apples and oranges as the plebiscite vote is only for guidance, such that it could be much more liberal in allowing.

TWO The question to be presented is valid as other nearby townships have installed television translators for public benefit.

There are defective questions in cases that have been cited. Such defects are: fraudulent, misleading, violate a portion of the constitution, multiple questions, speculation, a blank check in money or beyond the authority of the local government involved. The rejection of these cases has formed a pyramid of case law

that now ignores a fundamental right of the public. The New York State Town Law § 81 (e) is very broad and could readily include all acceptable questions.

THREE New York State Town Law § 81 (4) in conjunction with § 84 (1 and 2) limit the signers to a town petition to those whom are both registered voters and also registered property owners of the district. This "abridges" the rights of apartment dwellers with no ownership of district property who are otherwise qualified to sign petitions. Anybody who is qualified to vote will also know that if a money referendum is approved for additional expenditures then the the taxes on the building will increase and soon their rent will increase.

Another aspect of this, but not part of this case, is second homeowners who are deprived of their representation on special money matter votes because their voter registration is elsewhere, a

similarity to what caused the famous "Boston Tea Party".

Recently it was realized that the last sentence of New York State Town Law § 81 (4) is a limiting upon the rights of the public. This was not brought forth in any proceeding. SEE appendix pg 28 It could allow a local government to over appropriate a budget, then next year purchase something that the people would certainly disapprove, petition for a referendum then vote to reject the purchase.

New York State laws have a procedure to follow in petitioning city or town governments. Recently the question rose the New York State Constitution says "petition ... any department thereof", has the legislature erred by not passing laws to specify the procedure to petition the county, the State and the Federal government to be in compliance with the 1st and 14th amendments to the Constitution.

CONCLUSION

This case is based upon the concept of the formation of this nation, that is, the people are the Government and their vote is the highest decision of any question. In the first amendment to the United States Constitution, the phrase "to petition the government for a redress of grievances." allows the people to continue to seek changes that the majority of the people will approve.

Some states, such as Massachusetts, can petition and pass by public voting to create new laws, pass upon a disputed law and even change their state's constitution within the guide lines of the Mass. and US Constitutions. Informal information to petitioner tells of 23 states having a somewhat similar procedure, thereby being a democracy, as defined.

To dismiss this case or fail to change

the present court interpretations of New York States' laws would be promoting and furthering this state as having a semi-controlled dictatorship, where the people have no ability "to petition for a redress of grievances" in many of their government's decisions, unless at the local level and the subjects are listed in New York State's statutes.

The United States Constitution was written over 200 years ago, yet it has held viable in today's high speed, high technology world of instant worldwide communications and super-sonic jets. Now it is almost impossible to visualize life with sailboats and stagecoaches for transportation and news by the town crier since electricity, automobiles, airplanes and steam engines had not been devised, Yet New York State Court rulings have ceased to realize that the Constitution exists.

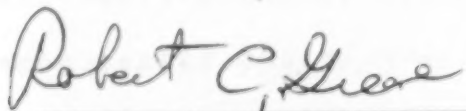
This case has presented court inter-

pretations that have greatly strayed from the guidelines of the United States Constitution. Therefore the supervisory power of this Court is appealed to, for the important reasons given. Admittedly later thoughts, not part of this case , are not within the jurisdiction, but are very briefly mentioned.

Petitioner preys that the information is satisfactorily and adequately transferred by this document such that this Court will act.

DATED: September 4, 1990

Respectfully submitted

A handwritten signature in cursive script, reading "Robert C. Greene". The signature is written in dark ink and is positioned above a horizontal line.

ROBERT C. GREENE Pro se

State of New York

Court of Appeals

At a session of the Court,
held at Court of Appeals
Hall in the City of Albany
on the seventh day of June

A.D. 1990 :

Present, HON. SOL WACHTLER, Chief Judge,
presiding.

3 Mo. No. 583 SSD 42

In the Matter of Robert C. Greene
Appellant,

v.

Town Board, Town of Warrensburg, et al.,
Respondents.

The appellant having filed notice of
appeal in the above title and due consid-
eration having been thereupon had, it is

ORDERED, that the appeal be and the same
hereby is dismissed without costs, by the
Court sua sponte, upon the ground that no
substantial constitutional question is
directly involved.

(S) Donald M. Sheraw
Clerk of the Court

Supreme Court-Appellate Division

Third Judicial Department

March 1, 1990

59516

In the Matter of ROBERT C. GREENE,
Appellant,

v

TOWN BOARD, TOWN OF WARRENSBURG, et al.,
Respondents.

YESAWICH, JR., J.

Appeal from a judgment of the Supreme Court (Dier, J.), entered May 24, 1989 in Warren County, which, in a proceeding pursuant to CPLR 78, granted respondents' motions to dismiss the petition.

Petitioner, a resident of the Town of Warrensburg, Warren County, asked respondent Town Board of Warrensburg (hereinafter the Board) to hold a referendum to enable the electorate to decide whether the Town, at its expense, should install television translators. Asserting that the requested action was illegal and unauthorized, the Board declined to submit the issue to the electorate. Petitioner then commenced this

CPLR article 78 proceeding to compel the Board to present the proposition. Supreme Court dismissed the petition. We affirm.

Whether the Board must submit petitioner's proposition to a referendum is an issue that has already been "necessarily decided in a prior proceeding *** (in which petitioner) was accorded a full and fair opportunity to contest the issue" (Allied Chem. v Niagara Mohawk Power Corp., 72 NY2d 271, 276, cert denied ___ US ___, 109 S Ct 785). In that earlier proceeding, this court determined that, in the absence of an express statutory basis, the Board could not place an identical proposition before the electorate (see, Matter of Greene v Town Board of Town of Warrensburg, 90 AD2d 916, 1v denied 58 NY2d 604). Although the current proposition and that previously presented to the Board for action differ in the number of signatures supporting them and the anticipated cost of installing and maintaining the translators, the issue

decided in the earlier article 78 proceeding and the instant one are precisely the same substantively (see, id.); accordingly, the doctrine of collateral estoppel precludes petitioner from relitigating this issue (see generally, Siegel, NY Prac § 457, at 604).

Also lacking in merit is petitioner's assertion that, to the extent that our earlier decision determined that his proposition was not authorized under Town Law § 81, the statute is unconstitutional. This statute does not, as petitioner suggests, abridge the people's right to petition the government for a redress of grievances (see, US Const 14th Amend; see also, NY Const, art 1, § 9). This is apparent from the very fact that petitioner's right to petition has not been impeded. The right to petition, however, does not translate into a duty upon government to act. Furthermore, Town Law § 81 provides a vehicle for citizens to have

specified issues submitted for referendum.
As such, it enlarges rather than diminishes
the opportunity to petition for redress.

We have examined petitioner's other
arguments and find them similarly
unpersuasive.

Judgement affirmed, without costs.

CASEY, J.P., WEISS, MIKOLL, YESAWICH, JR.,
and HARVEY, JJ., CONCUR.

ABBREVIATED AMENDMENTS OF THE UNITED
STATES CONSTITUTION

FIRST "Congress shall make no law ...
abridging ... the right of the people ...
to petition the Government for a redress
of grievances".

FOURTEENTH Section 1. "All persons
born or naturalized in the United States,
and subject to the jurisdiction thereof,
are citizens of the United States and of
the State wherein they reside. No State
shall make or enforce any law which shall
abridge the privileges or immunities of
citizens of the United States; nor shall
any State deprive any person of life,
liberty, or property, without due process
of law; nor deny to any person within its
jurisdiction the equal protection of the
laws.

Section 2. to end not applicable.

ABBREVIATED AMENDMENTS OF THE NEW YORK
STATE CONSTITUTION

ARTICLE 1, Paragraph 9.

1. No law shall be passed abridging the rights of the people peaceably to assemble and to petition the government, or any department thereof; ... remainder not applicable.

New York State Town Law § 81

Election upon proposition

The town board may upon its own motion and shall upon a petition, as hereinafter provided, cause to be submitted at a special or biennial town election, a proposition:

1. In any town:

(a) To erect a monument or monuments within the town in commemoration of any person or event.

(b) To establish and maintain public rest and comfort buildings or rooms.

(c) To purchase, lease, construct, alter or remodel a town hall, a town lockup or any other necessary building for town purposes, acquire necessary lands therefor, and equip and furnish such buildings for such purposes, or to demolish or remove any town building.

(d) To establish airports, landing fields, public parking places, public parks or playgrounds, acquire the necessary lands

therefor, and equip the same with suitable buildings, structures and apparatus.

(e) To vote upon or determine any question, proposition or resolution which may lawfully be submitted, pursuant to this chapter or any general or special law.

(f) To vote upon a proposition to create a new town out of one or more existing towns.

(g) To dredge, bulkhead, dock and otherwise improve any navigable, or other waterway, within the town, and to rent, purchase and equip necessary machinery for such dredging, docking, bulkheading or other improvement, and supply the necessary labor and materials therefor.

(h) To provide for the collection and disposition of garbage, ashes, rubbish and other waste matter in the town by (1) the award of one or more contracts for the collection and disposition of the same, (2) by the purchase, operation and maintenance of apparatus and equipment for the collection and transportation of the same, (3) by the construction, operation and

maintenance of a disposal or incinerator or
(4) by any combination of (1), (2) and (3).

2. In any town of the first class:

(a) To increase the number of councilmen
from four to six.

(b) To establish or abolish the ward
system for the election of councilmen in
towns having four or six councilmen.

(c) To decrease the number of councilmen
from four to two.

(d) To increase the number of councilmen
from two to four.

3. In a town of the second class having
five thousand or more population according
to the latest federal or state census or
enumeration or having an assessed valuation
of ten million dollars or more, as shown
by the latest completed assessment-roll of
such town, or adjoining a city having a
population of three hundred thousand or
more, as shown by the latest federal or
state census or enumeration, to change the
classification of such town to that of a

town of the first class.

4. Such petition shall be subscribed and authenticated, in the manner provided by the election law for the authentication of nominating petitions, by electors of the town qualified to vote upon a proposition to raise and expend money, in number equal to at least five per centum of the total votes cast for governor in said town at the last general election held for the election of state officers, but such number shall not be less than one hundred in a town of the first class nor less than twenty-five in a town of the second class. If such a petition be filed in the office of the town clerk not less than sixty days, nor more than seventy-five days, prior to a biennial town election, the proposition shall be submitted at such biennial election. If a petition be presented at any other time, a special election shall be called to be held

not less than sixty days, nor more than seventy-five days after the filing of such petition.

Any expenditure approved pursuant to this section shall be paid for by taxes levied for the fiscal year in which such expenditure is to be made. However, nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any expenditure enumerated in this section which is not authorized pursuant to this section. Any expenditure financed in whole from moneys appropriated from surplus funds shall not be subject to referendum.

NEW YORK STATE TOWN LAW § 84

Qualifications of electors at town elections

1. No person shall be entitled to vote upon any proposition for raising, appropriating or expending money or incurring any town liability, or for the sale or other disposition of town land or property, unless he or she is an elector of the town and the owner of property assessed upon the last preceding town assessment-roll; nor shall he or she be entitled to vote upon any proposition for raising, appropriating or expending money or incurring any liability which shall be a charge wholly against a district or a portion of said town unless he or she is an elector and the owner of property in such district or portion of the town, assessed upon the last preceding town assessment-roll.

2. The town board of a town of the first class may, by resolution adopted at a regular meeting, determine that thereafter

personal registration of voters shall be required for special town elections in which, as provided in this section or any other law, an elector of the town shall not be entitled to vote upon any proposition unless he or she is the owner of property assessed upon the last preceding town assessment roll, Such resolution and the notice hereinafter provided for shall specify the day or days, the place or places, and the hours during which a board or boards of registration shall meet for the purpose of preparing a register of voters of the town qualified to vote in such special elections, who shall present themselves personally for registration for such special election. The town clerk shall give notice at the expense of the town, by the publication of a notice in a newspaper published in said town, if there be any, or, if there be none, in a newspaper published in the county having general circulation in the town, specifying the day or days, the place or places, and hours during which the board or boards of

registration will meet for the purpose of preparing a register of qualified voters of the town as provided in this section. The first publication of such notice shall be at least ten days prior to the first day fixed by the town board on which boards of registration shall meet. In addition, the town clerk shall post or cause to be posted in five conspicuous places in said town copies of such notice at least ten days prior to the first day fixed by the town board on which the boards of registration shall meet.

Paragraph 3 to end of section, not applicable.

A BRIEF DESCRIPTION OF TV TRANSLATORS

They are in essence a repeater, anywhere that over the air television reception is impaired due to distance or terrain. With a satisfactory incoming signal from the desired station, they can be placed most anywhere from top of a mountain to a high building. The incoming signal is changed to a channel that is unused by air signals. The signal is then transmitted to best fit the community.

The homeowner points their antenna at the translator and tunes their TV set to the different channel. The use is free to all. One translator carries one TV program, many can be installed at a location.

Since 1956 the Federal Communications Commission has licensed them with over 5,000 used in this nation. A range of 3 to 10 miles or over 50 for the largest on an excellent vantage point can be had.

In some cases they are chained thru 3 or 4 to distances of 300 miles.

The news media has not presented the concept to the public, quite possibly, because so many individuals and corporations in the news media have investment's in cable TV. No listings have been found in Readers Guide to Periodic Literature on the subject in the over 180 magazines it indexes.

With available financing, a public need and some others, licenses will be issued to individuals, citizens groups, local government or TV stations. They are strictly regulated in several fashions. Written permission is required from the TV station and satellite leasee (if used).

A technical limit can occur around ten programs per community, never having the large number of programs as large cable TV systems. Nor would the permission be given for premium channels usage.

TV translators can operate into thin rural areas where a \$10,000 per mile cost of construction stops many cable TV's. Financed by local government they are a public service such as libraries, roads, public parks and playgrounds to use as needed. Their signal is degraded by hills and trees. Costs can range from \$150,000. to \$5,000. per channel for the smallest.

QUESTION PRESENTED ON PETITION

Shall the Town of Warrensburg provide improved television reception, where needed, from the six Capitol District television stations to most residents of the Township by the installation of television translators at an estimated initial cost of \$120,000.00 or less and an estimated yearly maintenance cost of \$2,000.00 or less.

Petitioner's added note: Canada uses a much less expensive type of equipment to approx. one third. this cost.

An FCC rules change would allow use.³⁴

